

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Petition for Declaratory Ruling and)	
Request for Expedited Action on the)	NSD File No. L-97-42
July 15, 1997 Order or the Pennsylvania)	
Public Utility Commission Regarding)	
Area Codes 412, 610, 215, and 717)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act)	
of 1996)	

**COMMENTS OF AT&T CORP. ON
PETITIONS FOR RECONSIDERATION**

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Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") hereby submits its comments on the Petitions for Reconsideration of the Commission's Memorandum Opinion and Order and Order on Reconsideration ("Pennsylvania Order") in the above-captioned proceeding.^{1/} In that order, the Commission reconsidered portions of the Second Report and Order^{2/} in its local competition docket in order to clarify the bounds of the authority delegated to state commissions to implement area code relief, and delegated additional authority over numbering issues to state commission. The petitioners' chief

^{1/} In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 19009 (1998) ("Pennsylvania Order").

^{2/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, (1996) ("Second Report and Order").

argument is that the Commission should confer additional authority on the states. As shown below, however, the Pennsylvania Order struck the appropriate balance, allowing states to take advantage of their expertise and knowledge of local circumstances, while ensuring the continued maintenance of consistent national numbering policies essential to the development of competition and the provision of the telecommunications services end users demand.

INTRODUCTION AND SUMMARY

In the Pennsylvania Order, the Commission struck the right balance between state authority and the need for consistent national numbering policies. Far from eviscerating the authority of state commissions, the order simply confirmed that the immediate and paramount concern is to ensure that all carriers have access to numbers on an equitable basis. The Pennsylvania Order advanced this goal by setting the right priorities. When an NPA is approaching jeopardy, state commissions must first decide on an area code relief plan. Once a relief plan has been established, state commissions can then turn their attention and resources to number rationing and other conservation measures.

The Commission has made clear that number conservation measures are not substitutes for timely area code relief. In jeopardy situations, the practical benefits of conservation measures are still unknown. Moreover, in such situations competing carriers often find that they are unable to obtain resources to serve existing and future customers even with the implementation of rationing and other measures. The longer state commissions delay decisions on area code relief – often in the futile hope that such decisions will be rendered unnecessary – the more consumers, carriers, and competition will suffer.

The Commission has also recognized the need for a uniform nationwide numbering system. Significant economic and societal harms would result if each state were permitted to

implement varying and inconsistent number rationing and conservation plans. For these reasons, the Commission acted appropriately in tying the ability of state commissions to implement number rationing and conservation measures to their area code relief decisions.

Contrary to the claims of some parties, the Commission did not foreclose all conservation measures prior to area code relief. State commissions have authority to implement rate center consolidation, which, as AT&T has frequently observed, likely has more potential to optimize number usage in the near term than other measures currently under consideration. Moreover, the industry may, by consensus, adopt any number of conservation measures, including rationing, during the relief planning process.

I. NUMBER CONSERVATION CANNOT REPLACE AREA CODE RELIEF

A number of petitioners appear to base their opposition to the Commission's Pennsylvania Order on the belief that effective number conservation will eliminate the need for area code relief.^{3/} Experience has demonstrated, however, that attempts to avoid implementing NPA relief in the hope that rationing and other conservation measures will obviate the need to implement such relief are sorely misguided.^{4/} Across the country, carriers facing imminent NXX exhaust in multiple NPAs are confronting similar efforts to resolve jeopardy situations through

^{3/} Petition of the Connecticut Department of Public Utility Control at 4 ("CtDPUC Petition"); Petition of the Maine Public Utilities Commission at 4 ("MPUC Petition"); Petition of Massachusetts Department of Telecommunications and Energy at 6-7 ("MDTE Petition"); Petition of the Pennsylvania Public Utility Commission at 6 ("PaPUC Petition").

^{4/} Such activity led to the situation in Pennsylvania. The PaPUC implemented conservation measures in lieu of area code relief until the advent of number exhaust compelled the PaPUC to reconsider and initiate conventional relief for area codes 717 and 215/610. See Pennsylvania Order at 19017-20, ¶¶ 12-17. The actions of the PaPUC prompted the Commission to issue the Pennsylvania Order clarifying the role of state commissions in numbering administration. Id. at 19022, ¶ 20.

ad hoc number conservation measures that cannot ensure an adequate supply of numbers. It is specifically to avoid such situations that the Commission has ruled that a relief plan must be in place before certain rationing and conservation measures are implemented.^{5/}

To obtain meaningful benefits from number conservation measures, they must be implemented before an NPA nears exhaust. Measures such as number pooling (even if it were generally available today – as it is not) do not work well in jeopardy situations, and will not eliminate the need to make prompt progress toward area code relief.^{6/} Moreover, as the Commission has recognized, reliance on number conservation measures in lieu of a suitable area code relief plan can be anticompetitive in effect because such plans may deprive competing carriers of adequate numbering resources to meet end-users' demands or degrade their services.^{7/}

^{5/} Id. at 19025-26, ¶¶ 24, 26 (“State commissions may not use conservation measures as substitutes for area code relief or to avoid making difficult and potentially unpopular decisions on area code relief.”).

^{6/} Id. at 19033, ¶ 38 (stating that number conservation measures, particularly unproved ones such as number pooling, are not sufficient substitutes for area code relief after jeopardy has been declared).

^{7/} The Commission found that the PaPUC's plan to implement conservation measures absent traditional area code relief disadvantaged certain competitors: (1) pooling and transparent overlays disfavored wireless and non-LRN-capable carriers because these carriers were not assured of obtaining getting numbers; (2) transparent overlays would have been problematic for wireless 911 service and wireless roaming; and (3) carriers unable to participate in the conservation measures were relegated to obtaining numbers through the rationing process. Pennsylvania Order at 19035-37, ¶¶ 40, 42-43.

II. NUMBER ADMINISTRATION ISSUES SHOULD BE ADDRESSED ON THE NATIONAL LEVEL

Some petitioners argue that the Commission should delegate greater authority over number administration to the states.^{8/} The Commission has repeatedly affirmed, however, that a system comprised of varying and inconsistent state regimes for number conservation would result in significant societal and economic costs.^{9/} In the 1996 Act, Congress established a uniform national system of numbering to ensure the efficient delivery of telecommunications services, and assigned the Commission responsibility for administering that system.^{10/} The Commission has wisely determined that it, with guidance from the North American Numbering Council (“NANC”), should develop the standards by which number conservation measures must be implemented. AT&T urges the Commission to promulgate those standards expeditiously. In the meantime, nothing would be gained by piecemeal implementation of number conservation measures on a state-by-state basis.

The Commission has recognized that number administration regimes that vary across each state border pose a serious threat to the integrity of the North American Numbering Plan (“NANP”). For example, lack of uniformity in pooling and similar measures could impair call

^{8/} Petition of the Colorado Public Utilities Commission at 5 (“CoPUC Petition”); CtDPUC Petition at 5; MPUC Petition at 4, 6; Petition of the National Association of Regulatory Utility Commissioners at 5 (“NARUC Petition”); PaPUC Petition at 9; Petition of Public Utility Commission of Texas at 13 (“PUCT Petition”).

^{9/} See, e.g., Second Report and Order at 19533, ¶ 320 (1996); Pennsylvania Order at 19022-24, ¶ 21.

^{10/} 47 U.S.C. § 251(e)(1). See also Second Report and Order at 19512, ¶ 271; Pennsylvania Order at 19016, ¶ 10.

routing and hamper the industry's ability to forecast and plan for exhaust.^{11/} As the NANC stated in its recent report to the Commission on possible number optimization plans, a uniform national architecture is required for some conservation methods to be implemented efficiently and to avoid imposing needless costs on the industry.^{12/} The states' ability to proceed with certain conservation measures has been properly limited and should remain so until national guidelines are in place.^{13/}

In a similar vein, number reclamation is a number administration issue that should be addressed at the national level. While the Pennsylvania Order explicitly prohibited states from reclaiming codes only in the context of pooling,^{14/} the Commission has not delegated reclamation authority to state commissions. The NANP Administrator ("NANPA") has responsibility for code reclamation and, through the Industry Numbering Committee ("INC"), is currently updating

^{11/} Pennsylvania Order at 19023-24, ¶ 21, 19031-32, ¶ 33 (stating that lack of uniformity may prevent routing of calls, and hamper the ability to forecast and properly plan for exhaust thereby accelerating the need for a new nationwide numbering plan; stating that premature deployment of a new numbering plan will cause costly and unnecessary network upgrades and consumer confusion). See id. at 19031-32, ¶ 33.

^{12/} North American Numbering Council, Number Resource Optimization Working Group Modified Report to the North American Numbering Council on Number Optimization Methods, at §§ 6.2.8, 8.21.3, 11.2.5 ("NANC Number Optimization Report") (stating the need for a uniform national architecture for Individual Telephone Number Pooling, Thousands Block Number Pooling, and Unassigned Number Porting).

^{13/} See Pennsylvania Order at 19022, ¶ 21; 19028, ¶ 28. The familiarity of state commissions with local circumstances is important in the context of rate center consolidation and in selecting the appropriate area code relief, but is of less significance for measures, such as pooling, which should be administered nationally under uniform standards and guidelines. See Pennsylvania Order at 19015-16, ¶¶ 8-9; 19030, ¶ 31.

^{14/} Pennsylvania Order at 19025-26, ¶ 24.

the Central Office Code Administration Guidelines.^{15/} Section 8 of both the current and draft revised guidelines sets forth reclamation responsibilities for both code holders and code administrators. The problem of wrongfully obtained or used codes should be addressed pursuant to those standards.^{16/}

III. THE PENNSYLVANIA ORDER DID NOT FORECLOSE THE OPPORTUNITY TO IMPLEMENT ALL CONSERVATION MEASURES

Some petitioners misinterpret the Pennsylvania Order as representing a reduction in the scope of their authority in the numbering arena.^{17/} This, however, is not the case. The Pennsylvania Order did not disturb the authority to implement new area codes granted to state commissions in the Second Local Competition Order,^{18/} and, in fact, granted state commissions additional authority to order NXX code rationing under certain circumstances.^{19/} In the

^{15/} INC Central Office Code (NXX) Assignment Guidelines, 95-0407-008 (July 1998, draft revision Dec. 11, 1998) (“CO Assignment Guidelines”).

^{16/} Some petitioners argue that these guidelines are unfair or confusing. See, e.g., Petition of the New Hampshire Public Utilities Commission at 7 (“NhPUC Petition”); MPUC Petition at 5. These petitioners make unfounded assumptions, however, about the length of the process prior to the NANPA’s involvement. In fact, the guidelines explicitly require the NANPA to refer reclamation issues to the INC. See CO Assignment Guidelines at § 8.2.2.

^{17/} See, e.g., Petition of California Cable Television Association at 6 (“CCTA Petition”); CoPUC Petition at 5; MPUC Petition at 2; MDTE Petition at 7; NARUC Petition at 4.

^{18/} Second Report and Order at 19512, ¶ 272 (delegating authority to state commissions to implement new area codes, and to make decisions on the details pertaining to area code implementation based on their familiarity with local circumstances).

^{19/} Pennsylvania Order at 19025, ¶ 23.

Pennsylvania Order, the Commission simply confirmed its intention to retain the plenary authority granted to it by Congress over number administration and conservation.^{20/}

Some petitioners also misread the order as foreclosing nearly every option to implement number rationing and other conservation measures.^{21/} To the contrary, state commissions have broad authority to adopt many conservation measures, so long as they decide on an area code relief plan before they do so. Number conservation is not a substitute for area code relief.^{22/} Thus, it makes sense for state commissions to focus their resources on devising the appropriate relief plan before implementing number rationing and other conservation measures. If conservation measures are effective, then area code relief implementation potentially could be deferred.^{23/}

Even without a relief plan, states have authority to implement rate center consolidation, and the Commission has encouraged states to move forward with such measures.^{24/} Rate center

^{20/} 47 U.S.C. § 251(e)(1). See Second Report and Order at 19512, ¶ 271; Pennsylvania Order at 19016, ¶ 10. The U.S. Supreme Court recently affirmed the FCC's exclusive authority to implement and interpret Section 251 of the Communications Act. AT&T Corp. v. Iowa Utilities Board, No. 97-82, slip op. at 28 (S.Ct. January 25, 1999).

^{21/} See, e.g., PaPUC Petition at 6; NARUC Petition at 3-4; NhPUC Petition at 8-9; PUCT Petition at 17; CCTA Petition at 6, 11-12, 13-14.

^{22/} See Pennsylvania Order at 19024-25, ¶ 22 ("Conservation methods are not, however, area code relief and it is important that state commissions recognize that distinction and implement area code relief when it is necessary.") Id. at 19027-28, ¶¶ 27-28.

^{23/} The Commission has granted Illinois limited authority to continue its pooling initiative despite the fact that the trials are mandatory. Id. at 19029, ¶ 30. It should be noted that Illinois has committed to a plan for area code relief, and that the pooling trial does not interfere with Commission guidelines for traditional area code relief. See id.

^{24/} Id. at 19029-30, ¶ 29 ("We encourage the Pennsylvania Commission and other state commissions to consider other measures and activities, such as rate center consolidation, that affect number usage and may decrease the frequency of the need for area code relief.").

consolidation can extend the life of an existing area code, provided that jeopardy has not been reached, by reducing the demand for numbers.^{25/} This is an important conservation method, and calls for the special expertise state commissions have with regard to local circumstances. AT&T fully supports rate center consolidation, provided that the potential negative effects on emerging competitors are minimized.^{26/}

The Pennsylvania Order also confirmed the ability of the industry to adopt conservation measures.^{27/} Indeed, in the vast majority of jeopardy situations, the industry has voluntarily agreed on rationing plans.^{28/} In addition, the industry has adopted other conservation measures, such as 1,000 block number management techniques.^{29/}

Some petitioners argue that the Pennsylvania Order will bring an end to existing rationing

^{25/} NANC Number Optimization Report at § 1.5.1.

^{26/} See Comments of AT&T Corp., In the Matter of North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures, NSD File No. L-98-135, at 5 (filed Dec. 21, 1999).

^{27/} Pennsylvania Order at 19026, ¶ 25. Pursuant to industry guidelines, conservation measures are typically not addressed unless jeopardy has been declared.

^{28/} See, e.g., CtDPUC Petition at 3; MDTE Petition at 6-7 (stating that the industry has voluntarily engaged in a self-imposed, self-regulated rationing plan); PUCT Petition at 4, 7.

^{29/} See PUCT Petition at 6.

plans, causing numbering resources to vanish and disabling competitive entry.^{30/} These concerns are unfounded. As noted above, in most states facing exhaust, the industry has reached a consensus on rationing plans. In these areas, numbers are currently being distributed pursuant to such plans. In those few NPAs where the state has had some role in imposing a rationing plan, the Commission can and should “grandfather” a state-imposed plan, so long as it is reasonable, does not violate Commission policies, and is acceptable to the industry.^{31/} Provided that a plan meets these criteria, AT&T is not opposed to the Commission granting special exceptions for existing state-imposed rationing plans. The Commission should clarify, however, that, on a going-forward basis, the industry can adopt different rationing or conservation plans by consensus.

There is no basis for some petitioners’ arguments that NPAs will exhaust sooner because of the Pennsylvania Order. The real threat to the states’ numbering resources is posed by the failure to implement NPA relief on a timely basis.^{32/} In this regard, AT&T is troubled by petitioners’ apparent belief that rationing can serve as a number management tool. Rationing is merely a stop-gap measure designed to give states time to adopt and implement area code relief

^{30/} See, e.g., Petition of the California Public Utilities Commission at 11; CCTA Petition at 6-9.

^{31/} For example, when the California Commission was required to resolve two issues left open by the industry and implement a rationing plan, the FCC granted the state commission temporary authority to continue to ration NXX codes through lotteries prior to making final decisions on area code relief. Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau, to Helen M. Mickiewicz, Senior Staff Attorney, California Public Utility Commission, NSD File No. L-98-136 (Dec. 1, 1998).

^{32/} See Pennsylvania Order at 19033, ¶ 38 (“Relying on experimental conservation methods, rather than planning for traditional area code relief, during the jeopardy period would place some carriers at risk and could delay area code relief implementation well beyond the projected exhaust dates.”)

and should be used only as a last resort because it may limit the ability of carriers to get the codes they need to meet end-users' demand for service. Instead of relying on number rationing, states should begin area code relief planning and implement relief well before jeopardy is declared.^{33/} The INC is working to develop uniform national jeopardy procedures for use by the NANPA and industry in every state. These procedures will provide a common set of processes, but will leave certain decisions, such as the number of codes per month available for assignment during jeopardy, to be made in individual cases.^{34/}

In this regard, AT&T believes that states should exercise the full extent of their authority to avoid jeopardy situations.^{35/} Improved exhaust forecasting by the NANPA based on greater carrier participation, as well as long-range planning, may avert the need to exist in a state of jeopardy. Failure to plan, however, cannot serve as a basis to request authority that the Commission has consistently refused to grant. Those states facing extended area code relief approval processes should begin area code relief planning at an earlier point in the life cycle of an area code, rather than request additional authority that is properly vested in the Commission.^{36/}

^{33/} Section 5.0 of the Current NPA Code Relief Planning and Notification Guidelines states, "NPA relief coordinators shall take the lead to prepare relief options for each NPA projected to exhaust within the next 5 to 10 years."

^{34/} See Industry Numbering Committee, Issue No. 148, Central Office NXX Workshop.

^{35/} Specifically, state commissions should take advantage of their authority to implement rate center consolidation to lessen the likelihood that they will reach jeopardy. More importantly, state commissions should enter into the planning process for area code relief sufficiently early so that they are not constrained by state statutory requirements and other impediments if jeopardy is later declared.

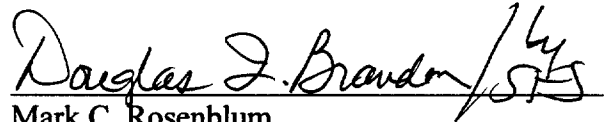
^{36/} For example, if California believes that it cannot start area code relief planning early enough, the CaPUC can and should pursue changes in the state requirements so that it can exercise greater flexibility. See CaPUC Petition at 12-13. In the meantime, the Commission has granted California temporary authority to continue its lotteries. In all events, no state should be

CONCLUSION

For the foregoing reasons, the Commission should affirm the conclusions it reached in the Pennsylvania Order. The Commission properly decided that state commissions must move forward with area code relief planning before implementing rationing and other conservation measures. Continued reliance on number conservation as a substitute for NPA relief will prevent carriers from obtaining the codes they need to serve customers and severely harm telecommunications competition and consumers.

Respectfully submitted,

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permitted to opt out of the consistent, national numbering policies the Commission has established pursuant to Congress' directive in Section 251(e). Indeed, if the existence of conflicting state provisions can serve as a basis to permit a state commission to deviate from the Pennsylvania Order, then the numbering policies addressed in that ruling necessarily will not develop in a coherent, national fashion – a result the Commission has correctly and repeatedly found would not be in the public interest.

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I, Amy Bushyeager, hereby certify that on this 4th day of February, 1999, I caused copies of the foregoing "Comments of AT&T Corp." to be sent to the following by hand delivery (*) or first class mail:

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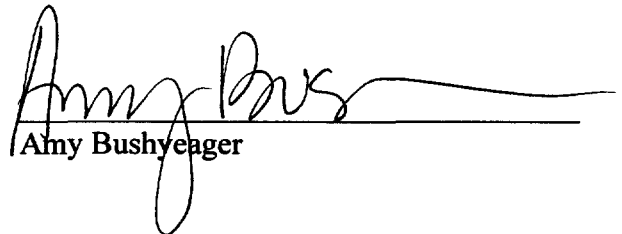
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